

U.S. Patent Application Serial No. 09/939,656

Inventor(s): UBER III et al.

Client Reference No.: IN/98-013.FWC.C.C.

Atty. Dkt. No.: 45210 - 265228

REMARKS

Claims 13, 14, 16, 67, 69, 72, 73, 75, 80, 82, 83, 85, and 90 are amended hereby. No claims are canceled or added. Accordingly, after entry of this Amendment, claims 13-18, 63-65, 67-78, 80-88, and 90-91 will remain pending.

In the Non-Final Office Action dated September 7, 2007, the Examiner rejected claims 13-18, 63-65, 67, 69-78, 80-88, 90, and 91 under 35 U.S.C. § 103(a) as being unpatentable over Orkin et al. (U.S. Patent No. 5,207,642). The Applicant respectfully disagrees with the Examiner and respectfully traverses the rejection.

In the Office Action, the Examiner also indicated that claim 68 contains allowable subject matter. The Applicant would like to thank the Examiner for this indication of allowable subject matter. In view of the Amendments presented herein, the Applicant respectfully elects, at this time, not to amend claim 68 into independent form. The Applicant respectfully submits that the subject matter of claim 68 remains allowable over the prior art cited by the Examiner.

In fashioning the rejection of the claims, the Examiner stated that Orkin et al. describes all of the features of the claims except for the second disposable portion. The Applicant respectfully disagrees and respectfully submits that the claims, as presented herein, are distinguishable from Orkin et al. for several reasons.

The Applicant first questions the Examiner's rejection of the claims based on the inclusion of reusable fluid paths and disposable fluid paths. The Applicant respectfully submits that nothing in Orkin et al. suggests at least this combination of features. To the contrary, the Applicant respectfully submits that Orkin et al. is directed to an apparatus containing only a disposable fluid path, namely the fluid containers 56, 58 and the tubing associated with those containers 56, 58.

To support the Applicant's position, the Applicant has reviewed Orkin et al. and finds reference to operation of the apparatus at col. 19, lines 22-46. In this section, Orkin et al. describes that, at the initiation of the apparatus, the user may select, at step 236, the "INSERT TUBING" function on line 9 of screen 5. (Orkin et al. at col. 19, lines 24-26.) This step may be repeated for each of the fluids associated with each of the occluders 64. (Orkin et al. at col. 19,

lines 27-46.) This passage, among others, strongly suggests that the containers 56, 58 and their associated tubing are entirely disposable. Were the containers 56, 58 and the tubing reusable, there would be no need to INSERT TUBING at the initiation of the device. Accordingly, the Applicant respectfully submits that Orkin et al. does not describe an apparatus with a disposable fluid path and a reusable fluid path.

At best, the Applicant perceives that the apparatus described by Orkin et al. is reusable from patient to patient but that the containers 56, 58 and the tubing are not. Accordingly, while the Applicant recognizes that the apparatus (*i.e.*, the stand and the electronic equipment, etc.) may be used for multiple patients, there is nothing in the reference to describe that the fluid path includes disposable and reusable parts. As a result, the Applicant respectfully submits that the reference cannot be applied against the claims pending in this application. At least for this reason, therefore, the Applicant respectfully requests that the Examiner withdraw the rejection of the claims under 35 U.S.C. § 103(a).

In addition, the Applicant recognizes that the tubing 90, 388 may be reused for the same patient. With reference to col. 31, lines 15-19, the Applicant recognizes that Orkin et al. provides for hangers 506 to suspend the containers 56 and a second set, or replacement set, of containers (not illustrated). After depletion of one or more of the initial containers 56, selected ones of the second containers would need to be introduced. The Applicant recognizes that a complete change of the tubing 90, 388 would not necessarily occur in this circumstance. Despite this, the Applicant respectfully submits that the claims have been drafted to make clear that a second per-patient disposable fluid path is connected to a second patient of the multiple patients. The second patient would then receive fluids from the first and second fluid sources that the first patient received. This arrangement is not contemplated by Orkin et al.

As noted above, the Orkin et al. reference is directed to the delivery of fluids to a single patient. Each of the embodiments described by Orkin et al. concern the provision of fluids to a single patient. While the Applicant separately recognizes that the apparatus (*i.e.*, the mobile base or housing 44), without any portion of the containers 56, 58 or the associated tubing, may be

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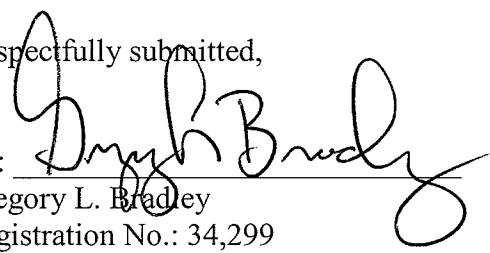
used for subsequent patients, there is nothing in the reference to suggest the use of first and second fluid sources for more than one patient.

Before closing, the Applicant would like to present to the Examiner one further observation. Specifically, there is nothing in Orkin et al. that suggests the combination of the following features: (1) mixing fluids from the first and second sources to create the first mixture for the first patient, and (2) mixing the fluids from the first and second sources to create the second mixture for the second patient. As noted above, since Orkin et al. describes an apparatus where fluids are delivered from the containers 56 to only one patient, Orkin et al. cannot be read to render any of the claims in the instant application obvious. Even if the second patient receives the same fluids via the Orkin et al. apparatus, the fluid sources are different from the first patient to the second patient. This distinction further distances Orkin et al. from the claims presented by this application.

In view of the foregoing, the Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims as being unpatentable over Orkin et al. The Applicant further respectfully requests that the Examiner pass this application quickly to issuance.

If there are any fees required for this submission that are not otherwise accounted for, please charge Deposit Account No. 02-1010. In addition, please credit any overpayments to the same Deposit Account.

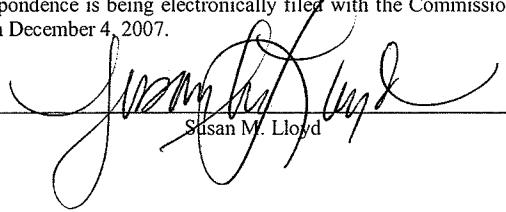
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being electronically filed with the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 4, 2007.



Susan M. Lloyd